

*Example:* The X Corporation and the Y Corporation, both of which make their income tax returns on a calendar year basis, are members of the same system group. As part of an exchange to which section 1081 (d)(1) is applicable the Y Corporation on June 1, 1954, issued to the X Corporation 1,000 shares of class A stock, preferred as to both dividends and assets. The fair market value of such stock at the time of issuance was \$90,000 and its basis to the X Corporation was \$75,000. On December 1, 1954, in obedience to an appropriate order of the Securities and Exchange Commission, the X Corporation sells all of such stock to the public for \$100,000 and applies \$95,000 of this amount to the retirement of its own bonds, which were outstanding on June 1, 1954. The remaining \$5,000 is not used to retire any of the X Corporation's stock or securities. Of the total gain of \$25,000 realized on the disposition of the Y Corporation stock, only \$10,000 is recognized (the difference between the fair market value of the stock when acquired and the amount for which it was sold), since such amount is greater than the portion (\$5,000) of the proceeds not applied to the retirement of the X Corporation's stock or securities. If in this example the stock acquired by the X Corporation had not been stock of the Y Corporation issued to the X Corporation or if it had been stock not preferred as to both dividends and assets, the full amount of the gain (\$25,000) realized upon its disposition would have been recognized, regardless of what was done with the proceeds.

**§ 1.1081-8 Exchanges in which money or other nonexempt property is received.**

(a) Under section 1081(e)(1), if in any exchange (not within any of the provisions of section 1081(d)) in which stock or securities in a corporation which is a registered holding company or a majority-owned subsidiary are exchanged for stock or securities as provided for in section 1081 (a), there is received by the taxpayer money or other non-exempt property (in addition to property permitted to be received without recognition of gain), then—

(1) The gain, if any, to the taxpayer is to be recognized in an amount not in excess of the sum of the money and the fair market value of the other non-exempt property, but

(2) The loss, if any, to the taxpayer from such an exchange is not to be recognized to any extent.

(b) If money or other nonexempt property is received from a corporation in an exchange described in paragraph

(a) of this section and if the distribution of such money or other nonexempt property by or on behalf of such corporation has the effect of the distribution of a taxable dividend, then, as provided in section 1081 (e)(2), there shall be taxed to each distributee (1) as a dividend, such an amount of the gain recognized on the exchange as is not in excess of the distributee's ratable share of the undistributed earnings and profits of the corporation accumulated after February 28, 1913, and (2) the remainder of the gain so recognized shall be taxed as a gain from the exchange of property.

**§ 1.1081-9 Requirements with respect to order of Securities and Exchange Commission.**

The term *order of the Securities and Exchange Commission* is defined in section 1083(a). In addition to the requirements specified in that definition, section 1081(f) provides that, except in the case of a distribution described in section 1081(c)(2), the provisions of section 1081 shall not apply to an exchange, expenditure, investment, distribution, or sale unless each of the following requirements is met:

(a) The order of the Securities and Exchange Commission must recite that the exchange, expenditure, investment, distribution, or sale is necessary or appropriate to effectuate the provisions of section 11(b) of the Public Utility Holding Company Act of 1935 (15 U. S. C. 79k (b)).

(b) The order shall specify and itemize the stocks and securities and other property (including money) which are ordered to be acquired, transferred, received, or sold upon such exchange, acquisition, expenditure, distribution, or sale and, in the case of an investment, the investment to be made, so as clearly to identify such property.

(c) The exchange, acquisition, expenditure, investment, distribution, or sale shall be made in obedience to such order and shall be completed within the time prescribed in such order.

These requirements were not designed merely to simplify the administration of the provisions of section 1081, and

they are not to be considered as pertaining only to administrative matters. Each one of the three requirements is essential and must be met if gain or loss is not to be recognized upon the transaction.

**§ 1.1081-10 Nonapplication of other provisions of the Internal Revenue Code of 1954.**

The effect of section 1081(g) is that an exchange, sale, or distribution which is within section 1081 shall, with respect to the nonrecognition of gain or loss and the determination of basis, be governed only by the provisions of part VI (section 1081 and following), subchapter O, chapter 1 of the Code, the purpose being to prevent overlapping of those provisions and other provisions of subtitle A of the Code. In other words, if by virtue of section 1081 any portion of a person's gain or loss on any particular exchange, sale, or distribution is not to be recognized, then the gain or loss of such person shall be nonrecognized only to the extent provided in section 1081, regardless of what the result might have been if part VI (section 1081 and following), subchapter O, chapter 1 of the Code, had not been enacted; and similarly, the basis in the hands of such person of the property received by him in such transaction shall be the basis provided by section 1082, regardless of what the basis of such property might have been under section 1011 if such part VI had not been enacted. On the other hand, if section 1081 does not provide for the nonrecognition of any portion of a person's gain or loss (whether or not such person is another party to the same transaction referred to above), then the gain or loss of such person shall be recognized or nonrecognized to the extent provided for by other provisions of subtitle A of the Code as if such part VI had not been enacted; and similarly, the basis in his hands of the property received by him in such transaction shall be the basis provided by other provisions of subtitle A of the Code as if such part VI had not been enacted.

**§ 1.1081-11 Records to be kept and information to be filed with returns.**

(a) *Distributions and exchanges; significant holders of stock or securities.* Every

significant holder must include a statement entitled, "STATEMENT PURSUANT TO § 1.1081-11(a) BY [INSERT NAME AND TAXPAYER IDENTIFICATION NUMBER (IF ANY) OF TAXPAYER], A SIGNIFICANT HOLDER," on or with such holder's income tax return for the taxable year in which the distribution or exchange occurs. If a significant holder is a controlled foreign corporation (within the meaning of section 957), each United States shareholder (within the meaning of section 951(b)) with respect thereto must include this statement on or with its return. The statement must include—

(1) The name and employer identification number (if any) of the corporation from which the stock, securities, or other property (including money) was received by such significant holder;

(2) The aggregate basis, determined immediately before the exchange, of any stock or securities transferred by the significant holder in the exchange, and the aggregate fair market value, determined immediately before the distribution or exchange, of the stock, securities or other property (including money) received by the significant holder in the distribution or exchange; and

(3) The date of the distribution or exchange.

(b) *Distributions and exchanges; corporations subject to Commission orders.* Each corporation which is a party to a distribution or exchange made pursuant to an order of the Commission must include on or with its income tax return for its taxable year in which the distribution or exchange takes place a statement entitled, "STATEMENT PURSUANT TO § 1.1081-11(b) BY [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER (IF ANY) OF TAXPAYER], A DISTRIBUTING OR EXCHANGING CORPORATION." If the distributing or exchanging corporation is a controlled foreign corporation (within the meaning of section 957), each United States shareholder (within the meaning of section 951(b)) with respect thereto must include this statement on or with its return. The statement must include—

(1) The date and control number of the Commission order, pursuant to